tion in so far as the question involved is regarded in and of itself. But in its larger aspect does the decision mean that, after all, original cost is to be the basis of valuation,—a theory which the Supreme Court has definitely disapproved?[11] Or is it to be regarded as a holding that the cost-of-reproduction method is not permissible in certain instances where its use will produce a not to be desired result?[12] If logic is to yield to considerations of natural equity in applying the cost-of-reproduction test, at least one instance suggests itself in which an increased, rather than a lessened, valuation should be allowed the utility. This would be the case with regard to "piecemeal construction." The fact that a utility was constructed piecemeal, as almost every utility has been, undoubtedly added to its actual cost. Yet this could not logically be considered in determining its reproduction value.[13]

In the light of this recent decision and of Mr. Justice Hughes' previous statement in the Minnesota Rate Cases,[14] that valuation is not a matter of formulas, it would seem that the answer to many of the questions connected with the valuation of public utilities which have not yet been considered by the Supreme Court of the United States must remain a matter of considerable uncertainty until they have been specifically passed upon by that body.

W. W. F., Jr.

TORTS: LIBEL: QUALIFIED PRIVILEGE.—Persons who act in accordance with the posted requests of employers to report the incivility or misconduct of an employee, are usually considered as performing a meritorious though disagreeable public service. In *Adams v. Cameron,*[1] however, such a person was subjected to a suit for libel and forced to pay five thousand dollars damages. The defendant in this case was a passenger upon a train of which plaintiff was the conductor. It appeared from the evidence that defendant in his communication to the railroad company stated

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336. Contra, Consolidated Gas. Co. v. New York (1907), 157 Fed. 849, 855; People v. Willcox (1913), 141 N. Y. Supp. 677 (an opposite decision on the point in question was reached by the Court of Appeals in its opinion in the same case, cited supra).

[11] See cases cited in note 7, supra.

[12] In People v. Willcox (1914), 210 N. Y. 479, 104 N. E. 911, the New York Court of Appeals said: "The cost of reproduction, less accrued depreciation, rule seems to be the one generally employed in rate cases. But it is merely a rule of convenience, and must be applied with reason."

[13] "The fact that appellant's plant has been constructed piecemeal does not increase its present value, although the cost of construction by such method may have been greater than if it had been constructed at one time." Pioneer Telephone and Telegraph Co. v. Westenhaver (1911), 29 Okla. 429, 118 Pac. 354, 357.

[14] (1913), 230 U. S. 352, 434, 33 Sup. Ct. Rep. 729, 57 L. Ed. 1511, 1556.

[1] (June 11, 1915), 20 Cal. App. Dec. 971.

that plaintiff had acted discourteously while under the influence of liquor. The plaintiff explained the appearances against him by showing that he had had a severe cold which caused him to take whiskey and glycerine for its treatment. As a result of defendant's communication plaintiff was discharged. The jury found that the defendant had acted with malice. The verdict may therefore be justified.[2]

But the trial court, in giving its instructions, which were approved by the District Court of Appeal, insisted upon "injecting into each a qualification to the effect that before libelous matter can be privileged it must appear that it was and is substantially true."[3] Upon application by defendant for a hearing before the Supreme Court, that body, while denying the application upon the finding of malice, took the opportunity to say that it did not approve of what the District Court of Appeal said in regard to the instructions.[4] The latter court overlooked the fact that in civil actions for libel or slander truth and privilege are two distinct defenses; that truth is always a defense regardless of privilege;[5] and that privilege is always a defense regardless of truth.[6] The District Court of Appeal cited no case to support its opinion excepting some involving defamation of a candidate for public office.[7] But in this class of cases the great weight of authority extends the privilege only to criticism and comment, not to misstatements of fact.[8] In the principal case, however, the privilege claimed is based upon section 47, subdivision 3, of the California Civil Code, which renders privileged "a communication, without malice, to a person interested therein, by one . . . . who is requested by the person interested to give the information." Even though such statements are untrue they are qualifiedly privileged.[9]

The only question remaining is whether one publishing a libel in response to a public notice will be accorded the same protection

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[2] Cal. Civ. Code, § 47, subd. 3; Preston v. Frey (1891), 91 Cal. 107, 27 Pac. 533; Shomberg v. Walker (1901), 132 Cal. 224, 64 Pac. 290; Hollenbeck v. Ristine (1898), 105 Iowa, 488, 75 N. W. 355, 67 Am. St. Rep. 306, and note.

[3] Adams v. Cameron, supra, p. 981.

[4] The San Francisco Recorder, August 17, 1915.

[5] Wilson v. Fitch (1871), 41 Cal. 363; Press Co. v. Stewart (1888), 119 Pa. 584, 14 Atl. 51.

[6] Cal. Civ. Code § 47, subd. 3; Holt v. Parsons (1858), 23 Tex. 9, 76 Am. Dec. 49, 51, and note; McAllister v. Detroit Free Press Co. (1889), 76 Mich. 338, 43 N. W. 431, 15 Am. St. Rep. 318, and note.

[7] Jarman v. Rea (1902), 137 Cal. 339, 70 Pac. 216; Dauphiny v. Buhne (1908), 153 Cal. 757, 96 Pac. 880; Tanner v. Embree (1908), 9 Cal. App. 481, 99 Pac. 547.

[8] Cases cited in note 7, and Belknap v. Ball (1890), 83 Mich. 583, 47 N. W. 674, 11 L. R. A. 72, 21 Am. St. Rep. 622; Upton v. Hume (1893) 24 Ore. 420, 33 Pac. 810, 21 L. R. A. 493, 41 Am. St. Rep. 683.

[9] Ritchie v. Arnold (1898), 79 Ill. App. 406; Hebner v. Great Northern R. Co. (1899), 78 Minn. 289, 80 N. W. 1128, 79 Am. St. Rep. 387, and note.

as one acting upon a personal request. In general all instances of privilege have as a basis the making of a statement in the discharge of some public or private duty or interest, whether legal or moral.[10] Development in this branch of the law has been marked by a widening of the interest or duty necessary to make a privileged occasion. The modern tendency is to apply the rule liberally, having regard for the general welfare of society,[11] so that it is privileged not only to give a character to a former servant, at the request of a prospective employer,[12] but even, as has been held, to volunteer information to a person interested where it is right in the interests of that person or of society that he should be informed.[13]

In view of this development it would seem but natural to extend the rule of privilege to the new situation where the request for information appears in the form of notices to the public at large. If information given at the request of the recipient is privileged, and voluntary communications intended to benefit society are also being held privileged, it seems but just that the giving of information to one interested, at his public request, and for the benefit of himself and society should also be privileged.

J. G.

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[10] Toogood v. Spyring (1834), 1 Cr. M. & R. 181; 18 Laws of England, 686.

[11] Stuart v. Bell [1891] 2 Q. B. 341; Andrews v. Nott Bower [1895] 1 Q. B. 888.

[12] Child v. Affleck (1829), 9 B. & C. 403, and cases cited in note 9.

[13] Coxhead v. Richards (1846), 2 C. B. 569; Davies v. Snead (1870), 5 Q. B. 608; Mott v. Dawson (1877), 46 Iowa, 533 ("Every one who believes himself possessed of knowledge which, if true, does or may affect the rights and interests of another, has the right, in good faith, to communicate such his belief to that other." p. 536.)